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S.E. Clemons Inc. and Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL-CIO.
Cases 31-CA-127976 and 31-CA-130804

January 12, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the consolidated complaint. Upon charges and amended charges filed by Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL-CIO (the Union), the General Counsel issued an order consolidating cases, consolidated complaint, and notice of hearing (the complaint) on September 30, 2015, against S.E. Clemons Inc. (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On November 2, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on November 5, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by October 14, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 15, 2015, advised the Respondent that unless an answer was received by October 19, 2015, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Adelanto, California (the Respondent's facility), and has been engaged in the construction industry providing commercial and residential HVAC (heating, ventilation, and air conditioning) services and installation.

In conducting its operations during the calendar year ending December 31, 2013, the Respondent provided services valued in excess of \$50,000 to Pacific Empire Builders, Inc. (Pacific Empire), an enterprise within the State of California.

Pacific Empire, a general contractor, is a California corporation with a principal location in Glendale, California, and jobsites in the State of California.

During the calendar year ending December 31, 2013, Pacific Empire, in conducting its operations as a general contractor, purchased and received at its jobsites located in California goods valued in excess of \$50,000 directly from points outside the State of California.

We find that Pacific Empire and the Respondent are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

INCLUDED: All full-time and regular part-time sheet metal workers, HVAC install service technicians employed by the Employer at or from its facility of operation, including, but not limited to, 16276 Koala Road, Adelanto, California.

EXCLUDED: All other employees, office clerical employees, estimators, salesmen, professional employees, guards and supervisors as defined in the Act, as amended.

On March 17, 2014, the Regional Director for Region 31 of the National Labor Relations Board issued a Certification of Representative certifying the Union as the exclusive collective-bargaining representative of the unit.

At all material times since March 17, 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About March 27, 2014, the Union requested in writing that the Respondent bargain collectively with the Union

as the exclusive collective-bargaining representative of the unit for an initial collective-bargaining agreement.

Since about March 27, 2014, the Respondent has failed and refused to recognize and bargain with the Union.

Since about May 5, 2014, the Union has requested in writing that the Respondent furnish it with the following information:

1. Employee handbook;
2. Any and all current Employer policies;
3. Employer rule book;
4. Company cost projections for benefits (401(k), health insurance, dental, vision, life insurance, AD&D, education benefits, etc.);
5. Payroll reports (to help calculate man hours and overtime distribution);
6. Job descriptions for each bargaining unit employee;
7. List of all current projects (name of project and project addresses); and
8. List of all current employees (names and addresses).

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about May 5, 2014, the Respondent has failed and refused to furnish the Union with the above information requested by it.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent, on request, to bargain with the Union as the exclusive collective-bargaining representative of unit employees and, if an agreement is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to provide the Union the information requested since about May 5, 2014.

To ensure that the employees are accorded the services of their selected bargaining representative for the period provided by law, we shall construe the initial period of the certification as beginning the date when the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).¹

ORDER

The National Labor Relations Board orders that the Respondent, S.E. Clemons Inc., Adelanto, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL-CIO as the exclusive collective-bargaining representative of employees in the bargaining unit.

(b) Failing and refusing to provide the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

¹ In the complaint, the General Counsel requests that the notice be posted in both English and Spanish. Because the complaint alleges that some of the employees have limited English proficiency and are Spanish speakers, we grant this request.

The complaint further requests that the Respondent's president be required to read the Board's remedial notice to assembled employees during paid working hours, or alternatively that a Board agent read the notice to employees during worktime in the presence of the president. We deny this request because the General Counsel has not demonstrated that the Board's traditional remedies are insufficient to remedy the effects of the Respondent's unfair labor practices. *Fallbrook Hospital Corporation d/b/a Fallbrook Hospital*, 360 NLRB No. 73, slip op. at 1 fn. 3 (2014), enf'd. 785 F.3d 729 (D.C. Cir. 2015); *Bruce Packing Co.*, 357 NLRB No. 93, slip op. at 7 fn. 4 (2011), enf'd. in part 795 F.3d 18 (D.C. Cir. 2015); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

Finally, the complaint requests that the Respondent be required to mail a notice to each unit employee who has worked for the Respondent at any time since the date of the refusal to bargain. In the absence of any explanation why the notice mailing remedy is warranted here, we deny the General Counsel's request. See *On Target Security, Inc.*, 362 NLRB No. 31, slip op. at 2 (2015).

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time sheet metal workers, HVAC install service technicians employed by the Employer at or from its facility of operation, including, but not limited to, 16276 Koala Road, Adelanto, California.

EXCLUDED: All other employees, office clerical employees, estimators, salesmen, professional employees, guards and supervisors as defined in the Act, as amended.

(b) Furnish to the Union in a timely manner the information it requested since about May 5, 2014.

(c) Within 14 days after service by the Region, post at its facility in Adelanto, California, copies of the attached notice marked "Appendix" in both English and Spanish.² Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 27, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 12, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Sheet Metal, Air, Rail, Transportation Workers Local Union 105, AFL-CIO as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an under-

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

standing is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time sheet metal workers, HVAC install service technicians employed by us at or from our facility of operation, including, but not limited to, 16276 Koala Road, Adelanto, California.

EXCLUDED: All other employees, office clerical employees, estimators, salesmen, professional employees, guards and supervisors as defined in the Act, as amended.

WE WILL furnish to the Union in a timely manner the information requested by the Union since May 5, 2014.

S.E. CLEMONS INC.

The Board's decision can be found at www.nlrb.gov/case/31-CA-127976 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

